

**Before The  
Federal Communications Commission  
Washington, D.C. 20554**

**In re Applications of**

**K225DB  
Elohim Group Corporation  
San Jose, California**

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**BLFT-20190318ABU  
Facility ID: 148598**

**Petition To Deny**

Center For Training and Careers of San Jose, California ("CTC") hereby petitions to deny the license application BLFT-20190318ABU for FM Translator facility K225DB, Facility ID: 148598, of Elohim Group Corporation ("Elohim"). CTC has a petition pending against late-filed underlying FCC 349 application BMPFT-20190318AAQ, in turn based on modification application BMPFT-20190311ABA, against which CTC also filed for reconsideration on March 14, 2019<sup>1</sup>.

It is necessary to also reference the previous Form 350 application BLFT-20190318AAJ; which despite its summary dismissal, is relevant in context of this proceeding.

The Center For Training and Careers ("Petitioner"), licensee of Low Power FM facility KCXU-LP serving San Jose on a channel first adjacent to the translator, affirms our standing to file petitions. As documented in our Petition to Deny against K225DB application BLFT-20190318AAJ, the Translator facility immediately caused interference to our coverage. The translator has also short-spaced KCXU-LP since October 2016 on co- and adjacent channels, blocking plans to move.

**Expiration of original construction permit BNPFT-20030317KGU**

The original construction permit on which all recent applications are based, BNPFT-20030317KGU, as modified via BNPFT-20130829AIJ, expired as of 3:00 am local time on March 18, 2019. All subsequent authorizations refer back to the original permit with a notice: "The authority granted herein has no effect on the expiration date of the underlying construction permit."<sup>2</sup> A copy of the Authorization issued via BNPFT-20130829AIJ is attached as an Exhibit.

Shortly after 12:01 am Eastern Time on March 18, 2019, FCC 350 License BLFT-20190318AAJ<sup>3</sup> filed by Elohim appeared in CDBS, certifying the facility as built per authorization in the permit for BMPFT-20190311ABA. No other applications for K225DB were registered in CDBS at that time.

<sup>1</sup> See Petition for Reconsideration filed March 14, 2019 on application BMPFT-20190311ABA.

<sup>2</sup> See BNPFT-20130829AIJ: [http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdb/public/pubacc/prod/app\\_list.pl?Arn=20130829AIJ](http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdb/public/pubacc/prod/app_list.pl?Arn=20130829AIJ)

<sup>3</sup> See BLFT-20190318AAJ [http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdb/public/pubacc/prod/app\\_list.pl?Arn=20190318AAJ](http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdb/public/pubacc/prod/app_list.pl?Arn=20190318AAJ)

On March 18th, CTC manager of KCXU-LP, Manuel J. Martinez visited the precise site coordinates where the antenna was to be built. While at the site, Martinez sent an email message direct to Media Bureau staff and copied Cc: to counsel of the applicant, confirming no antenna was found, with a link to an online folder with fresh photos taken at the site within the hour.

Despite Elohim certifying License application BLFT-20190318AAJ, no construction existed in accordance to the Authorization specified in underlying application BMPFT-20190311ABA

### **Alternate facility did not conform to the standing authorization**

In a subsequent Opposition to CTC's pending PFR for this facility, a Declaration submitted by Elohim's chief engineer stated construction was completed on March 17<sup>th</sup>, 2019. Interestingly, the Declaration made no reference to the specific coordinates or elevation. However, the only standing Authorization active at the time the engineer stated as being in the area was BMPFT-20190311ABA, which expired as a matter of law on March 18<sup>th</sup> at 3:00 am Pacific Time.

The Authorization for construction permit BMPFT-20190311ABA<sup>4</sup> specified the site Coordinates at North Latitude: 37 deg, 19 min 37 sec, West Longitude at 121 deg 45 min 34 sec (NAD 27). With a site Elevation at 217 meters and center of radiation (COR) at 9 m AGL, the Authorization specified a Height of radiation center above mean sea level (AMSL) at 226 meters, with power at 250 w ERP.

Commission rule 47 CFR 73.1690<sup>5</sup> does allow for facilities to be constructed within reasonable tolerance of their respective Authorizations. Even so, on March 18<sup>th</sup>, CTC's manager of KCXU-LP verified no such antenna structure of similar height built within three seconds of the location.

### **New modification BMPFT-20190318AAQ on which License is based was not timely filed**

When CTC's manager wrote from the site on the afternoon of March 18<sup>th</sup> to Media Bureau staff, a new application suddenly posted in CDBS was mistakenly referenced for the license application. It was not immediately realized that this new application was not the original License application appearing earlier after 12:01 am Eastern time, but another new application which was not posted within CDBS before 6:00 am Pacific Time on the morning of March 18<sup>th</sup>.

When later examining this new application, it became clear that BMPFT-20190318AAQ was actually a late-filed Form 349 application, submitted after the expiration of the original construction permit. As such, the License application in question here, BLFT-20190318ABU, should not be considered and advanced for processing.

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<sup>4</sup> BMPFT-20190311ABA [http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdb/public/prod/app\\_list.pl?Arn=20190311ABA](http://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdb/public/prod/app_list.pl?Arn=20190311ABA)

<sup>5</sup> 47 CFR § 73.1690

### **No County permits issued at or near coordinates in BMPFT-20190318AAQ before expiration**

The alternate site revealed in the Opposition filed by Elohim where an unauthorized build occurred, revealed as APN# 659-24-009<sup>6</sup>, was confirmed by the Santa Clara County Planning Department as having no new permit issued for that parcel. Additionally, on March 21, 2019, County staff also uncovered a history of previous violations, including unpermitted antenna structures<sup>7</sup>.

The May 2017 version of Instructions for FCC Form 349 states: "*All applicants for broadcast facilities must have a reasonable assurance that the specified site will be available at the time they file FCC Form 349.*" In other instances, the Commission has clarified its policies deferring to the rules and ordinances of local jurisdictions as also satisfying 'reasonable assurance'.

Prior to the submission of the license applications, CTC submitted with its first Petition an email from the Santa Clara County's Planning Office verifying no permits issued for an antenna tower in the area. The senior planner clarified no permits were issued for any FM or Telecom antenna structure on parcels under county jurisdiction in proximity to the coordinates along the county road<sup>8</sup>. Without clearing the County's permitting process, Elohim cannot be credited with meeting criteria for reasonable assurance.

### **Sequence and processing of new application filings are not consistent**

CTC has noticed that on March 20<sup>th</sup> 2019, the same day new FCC Form 350 license application BLFT-20190318ABU appeared in CDBS, the previous license application, BLFT-20190318AAJ – based on Form 349 BMPFT-20190311ABA – was Dismissed

However, this second license application – BLFT-20190318ABU - was not based on the timely-filed but defective Form 349 BMPFT-20190311ABA, but on late-filed Form 349 BMPFT-20190318AAQ.

In turn, the Purpose checked in Section I of Form 349 BMPFT-20190318AAQ was not to modify a Form 350 License application, but to modify the previous Form 349, BMPFT-20190311ABA.

Regardless, the Authorization for BMPFT-20190318AAQ otherwise gives no additional extension to the original expiration date.

Rather, as with all subsequent authorizations, simply states: "*The authority granted herein has no effect on the expiration date of the underlying construction permit.*" That original underlying construction permit would be BNPFT-20030317KGU. When authorizations run out, standard procedure is to cancel permits, with no routine extensions given.

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<sup>6</sup> Mapping of APN # 659-24-009 via Santa Clara County Planning website: <http://sccpropertyinfo.org>

<sup>7</sup> See Exhibit with email from Santa Clara County Planning Office, March 21, 2019.

<sup>8</sup> See Exhibit with email from Santa Clara County Planning Office, March 13, 2019.

## **Conclusion**

The late-filed Form 349 modification BMPFT-20190318AAQ was not submitted until after expiration of the original underlying construction permit, BNPFT-20030317KGU. Although Elohim previously filed FCC Form 350 application BLFT-20190318AAJ, the alternate facility did not conform to its underlying authorization (BMPFT-20190311ABA), and exceeded the maximum allowable tolerances in violation of 47 CFR 73.1690 in respect to height and coordinates.

Perhaps more importantly, according to the communications from the County Planning Office, no permits were issued clearing construction for an antenna structure at the site, thereby failing to meet the criteria for Reasonable Assurance, and resulting in construction of an unauthorized facility.

Consequently, Form 350 License application BLFT-20190318ABU should be denied and dismissed.

Under penalty of perjury, the undersigned declare under the laws of the United States that the foregoing is true and correct.

Executed on this 22th day of April, 2019.

Respectfully Submitted,

/S/

**Victor Garza**  
Cofounder / Director  
Center For Training And Careers  
749 Story Road  
San Jose, California 95122

/S/

**Manuel J. Martinez**  
Station Manager, KCXU-LP FM  
Center For Training And Careers  
749 Story Road  
San Jose, California 95122

## **CERTIFICATE OF SERVICE**

I certify that on this 22<sup>nd</sup> day of April 2019, I have caused copies of the foregoing to be served through First Class mail and/or electronically to the following:

Dan J. Alpert  
Legal Counsel, Elohim Group Corporation  
2120 N. 21st Road  
200 H Street  
Arlington, Virginia 22201  
Email: <dja@commlaw.tv>

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 Twelfth Street S.W.  
Washington D.C. 20554

Albert Shuldiner  
Chief, Audio Division, Media Bureau  
Federal Communications Commission  
445 Twelfth Street S.W.  
Washington D.C. 20554  
Email: Albert Shuldiner <Albert.Shuldiner@fcc.gov>

James Bradshaw  
Deputy Chief, Audio Division, Media Bureau  
Federal Communications Commission  
445 Twelfth Street S.W.  
Washington D.C. 20554  
Email: James Bradshaw <James.Bradshaw@fcc.gov>

Signed,

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/S/

Manuel J. Martinez  
749 Story Road - Suite 10  
San Jose, California 95122